



# City of Portland, Oregon **Bureau of Development Services Land Use Services**

1900 SW 4th Avenue, Suite 5000 Portland, Oregon 97201 503-823-7300 Fax 503-823-5630 TTY 503-823-6868 www.portlandonline.com/bds

November 19, 2008 Date:

To: Interested Person

From: Matt Wickstrom, Land Use Services

503-823-7840 / WickstromM@ci.portland.or.us

## NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 08-168117 AD

## **GENERAL INFORMATION**

Applicant: Wayne Bigelow

Division Street Dairy Queen

PO Box 821373 Vancouver, Wa 98682

Site Address: 17405 SE DIVISION ST

TL 7100 0.59 ACRES, SECTION 06 1 S 3 E Legal Description:

Tax Account No.: R993064250 State ID No.: 1S3E06DC 07100

Quarter Section: 3248

Neighborhood: Centennial, contact Louise Cody at 503-252-4302

**District Coalition:** East Portland Neighborhood Office, contact Richard Bixby at

503-823-4550

CN2 (Neighborhood Commercial 2) Zoning:

Case Type: AD (Adjustment)

Procedure: Type II, an administrative decision with appeal to the Adjustment

Committee.

### Proposal:

The applicant proposes one Adjustment to standards of the Portland Zoning Code in association with a planned addition to the fast food restaurant at this site. The approximately 110 square foot addition would add ADA accessible public restrooms to the restaurant, taking the place of restrooms which aren't accessible and which can only be accessed from the outside of the building. In order to create an environment that is inviting to pedestrians and transit users, the Portland Zoning Code requires portions of buildings and additions to be constructed within 10 feet of a transit street property line or closer to conformance with this standard. The restroom addition is proposed to be located approximately 120 feet from the SE Division Street property line. The applicant requests one Adjustment to increase the maximum transit street setback from 10 feet to 120 feet. The applicant has been informed that additional landscaping

along the SE Division Street property line may be required as mitigation for the requested Adjustment.

## Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of 33.805.040 A-F, Adjustments, cited below:

#### ANALYSIS

**Site and Vicinity:** The approximately 25,000 square foot site is developed with a fast food restaurant. The building is placed in roughly the center of the site with surface parking located to the west and east of the building. There is currently one curb cut which provides access to the site from SE 174<sup>th</sup> Avenue and two curb cuts which provide access from SE Division Street. An area between the building and SE Division Street is developed with an outdoor seating area and some landscaping. The parking lot is not landscaped. The surrounding vicinity is primarily developed with low intensity commercial development with some multi-dwelling residential development on SE Division Street. Single-dwelling residential development is found further north of the site away from SE Division Street.

**Zoning:** The site is zoned CN2 (Neighborhood Commercial 2). The CN2 zone is intended for small commercial sites and areas in or near less dense or developing residential neighborhoods. The emphasis of the zone is on uses which will provide services for the nearby residential areas, and on other uses which are small scale and have little impact. Development is expected to be predominantly auto accommodating, except where the site is adjacent to a transit street.

Land Use History: City records indicate there are no prior land use reviews for this site.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **October 20, 2008**. The following Bureaus have responded:

- The Water, Fire and Parks Bureaus responded with no concerns (Exhibit E-1).
- The Bureau of Environmental Services responded that the improvements are less than 500 square feet in area and no new connection is necessary therefore the Stormwater Management Manual requirements are not triggered (Exhibit E-2).
- The Life Safety Section of BDS responded that based on the information provided there appears to be no conflict between the proposal and applicable building codes. The response also states that a building permit has been applied for and will be assigned a Life Safety reviewer (Exhibit E-3).
- The Site Development Section of BDS responded with no objection to the requested Adjustment. The response provides information on stormwater management and sanitary sewer service (Exhibit E-4).
- The Development Review Section of Portland Transportation reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, Title 33, Title 17, and for potential impacts upon transportation services. The response notes that there are no Title 33 related approval criteria for Portland Transportation to address. The response notes no objections to the proposal and states that the applicant is advised that the western-most driveway along the SE Division Street frontage of the site will need to be closed prior to issuance of a building permit for the project (Exhibit E-5).

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on October 20, 2008. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

#### ZONING CODE APPROVAL CRITERIA

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the code's regulations would preclude all use of the site. Adjustment reviews provide flexibility for unusual situations and to allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

#### 33.805.40 Adjustment Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. stated below are met.

**A.** Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

**Findings:** The applicant requests one Adjustment to increase the maximum transit street setback from 10 feet to 120 feet for an approximately 110 square foot addition on the west side of the existing building. The purpose of the setback regulations is listed below:

## Purpose 33.130.215 Setbacks

The required building setbacks promote streetscapes that are consistent with the desired character of the different commercial areas. The CN1, CM, CS and CX setbacks promote buildings close to the sidewalk to reinforce a pedestrian orientation and built-up streetscape. The setback requirements for areas that abut residential zones promote commercial development that will maintain light, air, and the potential for privacy for adjacent residential zones. The setback requirements along transit streets and in Pedestrian Districts create an environment that is inviting to pedestrians and transit users.

Maximum transit street setbacks encourage buildings to be located in close proximity to the transit street. This is intended to create a more urban streetscape which provides pedestrians and transit users views of buildings and active areas within buildings instead of surface parking and vehicles. Were this building constructed today at least 50 percent of the ground level street facing façade of the building would need to be located within 10 feet of the transit street property line. Considering the current location of the building, meeting this standard for the relatively small addition would be impractical, if not impossible. Therefore, it is important to consider alternatives which can help support the purpose of the maximum transit street setback regulations.

One way in which the pedestrian and transit users' experience will be improved is through a requirement which Portland Transportation (PDOT) indicated will be applied at the time of building permit review. PDOT will require the western-most curb cut along SE Division Street to be closed. This will eliminate the ability for vehicles to enter and exit the site so close to the intersection of SE Division and SE 174th Avenue which creates a safer and more pleasant pedestrian experience. Adding landscaping around the edges of a site is another way in which the pedestrian and transit users' experience can be improved. As no landscaping is currently located along the street frontages of the site, adding landscaping will significantly soften views of the site and its parking. Two locations would especially benefit from the addition of landscaping - the first, an area around the existing business sign on SE Division Street or the second, the area where the corner of the site abuts the intersection of SE Division Street and SE 174th Avenue. In order to determine the appropriate square footage of landscaping to off-set the Adjustment to the maximum transit street setback, staff considered the square footage of landscaping which would be required along the perimeter of the site where the curb cut will be closed. Assuming that closing the curb impacts approximately 30 feet of site frontage and perimeter landscaping is required to be 5 feet deep, 150 square feet of landscaping would be required along the frontage of the closed curb cut. Therefore, in order to properly balance the

Adjustment request to increase the maximum transit street setback for the addition from 10 feet to 120 feet with necessary improvements to the pedestrian and transit users' experience, 150 square feet of additional landscaping is required. This landscaping may be located in one of the two areas described above. The landscaped area must be a minimum of 5 feet deep and must be landscaped with one medium or two small trees, six shrubs and ground cover plants must cover the remainder of the landscaped area. The tree(s) must be a minimum of 2.0 caliper inches at the time of planting and shrubs must be a minimum of one-gallon in size.

Based on the information above, this criterion is met.

**B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

**Findings:** The site is located at the corner of SE Division Street and SE 174<sup>th</sup> Avenue. In this location the Transportation Element classifies SE Division Street as a District Collector, a Major Transit Priority Street, a City Bikeway, a City Walkway, a Minor Truck Street, a Major Emergency Response Street and a Community Collector. SE 174<sup>th</sup> Avenue is classified as a Neighborhood Collector, a Local Service Transit Street, a City Bikeway, a City Walkway, a Local Service Truck Street, a Major Emergency Response Street and a Local Street. The reviewer from PDOT examined the proposal in relation to the street designations and stated no objections. The CN2 zone is intended for small commercial sites and areas in or near less dense or developing residential neighborhoods. The emphasis of the zone is on uses which will provide services for the nearby residential areas, and on other uses which are small scale and have little impact. Development is expected to be predominantly auto accommodating, except where the site is adjacent to a transit street. The proposed Adjustment request does not conflict with the desired character of the CN2 zone, the commercial use can still provide services to the nearby residential neighborhoods. Based on this information, this criterion is met.

**E.** Any impacts resulting from the adjustment are mitigated to the extent practical; and

**Findings:** Impacts associated with the Adjustment request to increase the maximum transit street setback from 10 feet to 120 feet for the addition are adequately mitigated through a requirement to add 150 square feet of landscaping in one of two locations along SE Division Street. The landscaping will provide additional visual interest and will help soften views of the parking area in front of the commercial building. This criterion is met.

- **C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and
- **D.** City designated scenic resources and historic resources are preserved; and
- **F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resources and resource value as is practical.

**Findings:** Only one adjustment is requested, the site does not contain any identified scenic or historic resources and the site is not located in an environmental zone; therefore, these criterion are not applicable.

## **DEVELOPMENT STANDARDS**

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

## CONCLUSIONS

The applicant proposes one Adjustment to increase the maximum transit street setback for a building addition from 10 feet to 120 feet. As noted in this report, the project is able to meet the Adjustment approval criteria with approval granted based on the relatively small square footage of the addition and the condition of approval to add parking lot landscaping along the SE Division Street frontage of the site. With approval requiring that the permit drawings substantially conform with the site plan attached, the request meets the applicable criteria and should be approved.

#### ADMINISTRATIVE DECISION

Approval of an Adjustment to 33.130.215 to increase the maximum transit street setback from 10 feet to 120 feet for the addition, per the approved site plans, Exhibits C-1 through C-2, signed and dated November 17, 2008, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition (B) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE Case File LU 08-168117 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. 150 square feet of parking lot landscaping is required. This landscaping may be located in one of two locations shown on the attached site plan and must be a minimum of 5 feet in depth. The landscaped area must be a minimum of 5 feet deep and must be landscaped with one medium or two small trees, six shrubs and ground cover plants must cover the remainder of the landscaped area. The tree(s) must be a minimum of 2.0 caliper inches at the time of planting and shrubs must be a minimum of one-gallon in size.

Decision rendered by:

By authority of the Director of the Bureau of Development Services

On November 17, 2008

Decision mailed: November 19, 2008 Staff Planner: Matt Wickstrom

**About this Decision.** This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**Procedural Information.** The application for this land use review was submitted on October 6, 2008, and was determined to be complete on October 16, 2008.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on October 6, 2008.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period.

### Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has

independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

**Conditions of Approval.** If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed by 4:30 PM on December 3, 2008 at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. An appeal fee of \$250 will be charged. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7967 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at <a href="https://www.portlandonline.com">www.portlandonline.com</a>.

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

#### Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- Unless appealed, The final decision may be recorded on or after **December 4, 2008 (the day following the last day to appeal).**
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034 For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

**Expiration of this approval.** An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

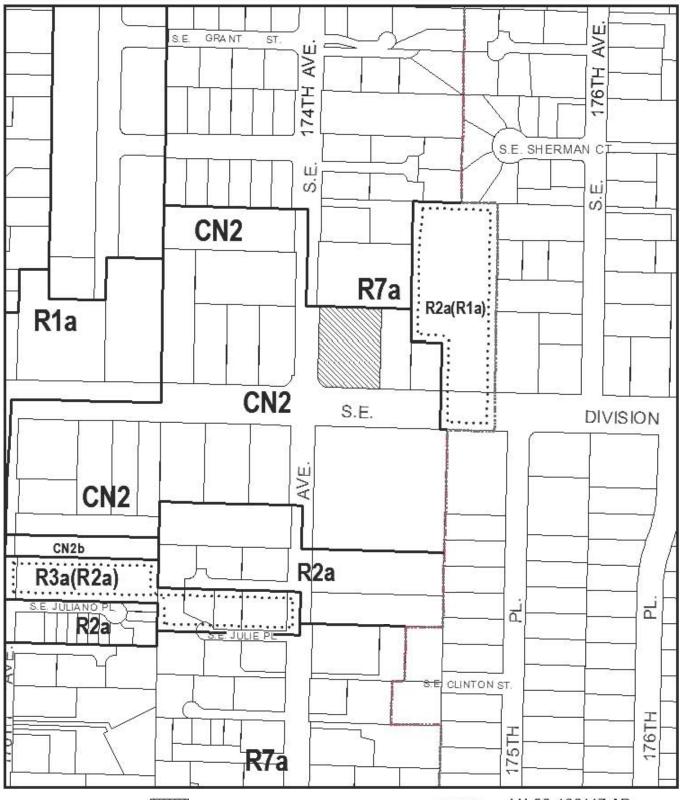
#### **EXHIBITS**

#### NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement and Original LU Application
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Elevation Drawings (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Summary sheet of Bureau responses
  - 2. Bureau of Environmental Services
  - 3. Life Safety Section of BDS
  - 4. Site Development Section of BDS

- 5. Development Review Section of Portland Transportation
- F. Correspondence: None received
- G. Site History Research

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



ZONING Site

File No. \_\_LU 08-168117 AD 3248,3348 1/4 Section \_\_

1 inch = 200 feet

1S3E06DC 7100 State Id .

B (Oct 08,2008) Exhibit \_



NORTH

